

## **Exhibit 5**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: : Chapter 11  
W.R. Grace & Co., et al., :  
Debtor(s). : Bankruptcy #01-01139 (JKF)  
.....

Wilmington, DE  
October 24, 2005  
12:00 p.m.

TRANSCRIPT OF OMNIBUS HEARING  
BEFORE THE HONORABLE JUDITH K. FITZGERALD  
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 representations. There's not one word in any of the pleadings  
2 that Grace has filed in this case and newspaper articles and  
3 other inadmissible sources included that suggests that the  
4 problem of shopping B reads arises not when a single firm might  
5 shop a B reader out on multiple doctors, but when they're in  
6 effect laundering the shopping by having one firm do the  
7 shopping and then in order to somehow or another make it clean,  
8 you pass the claim to another law firm. That -- there's just -  
9 - she just made that up as far as this record is concerned.

10 THE COURT: I --

11 MS. HARDING: I'm searching --

12 THE COURT: Whether made up or not, this is going far  
13 afield of what an estimation hearing's all about.

14 MS. HARDING: Your Honor, the only thing we're asking  
15 for here is the right to take the discovery -- is to issue the  
16 questionnaire and to -- and the law firms that get the  
17 questionnaire --

18 THE COURT: I'm not permitting the questionnaire. If  
19 -- #1, if you want evidence from a specific firm, then you do  
20 the formal discovery according to the Rules of Evidence,  
21 because I believe that there are constitutional problems with  
22 what you're asking. That without consent of their clients the  
23 lawyers may in fact be compromising some piece of advice that  
24 they have given to a client for what reason. There may be  
25 attorney-client privilege. There may be work product. There

1 could be all sorts of problems. There are definitely with  
2 respect to the financial relationships and how firms transfer  
3 clients or share clients among one another, proprietary  
4 information involved. There are all sorts of problems with  
5 this questionnaire. So, I'm not going to approve it.

6 If you've got need for specific discovery, focused on a  
7 specific area, you can take it and we'll deal with it  
8 piecemeal. But overall, I am not going to permit these broad-  
9 based questions. I didn't permit them with the individuals.  
10 I'm not going to permit them with the lawyers. If you try in  
11 discovery I'm going to permit it, so please -- although I'm not  
12 giving you advisory opinions, I'm giving you advice. I'm not  
13 going to permit it.

14 So tailor your questions if you have some need to this  
15 specific whatever it is that you're looking for so that when I  
16 say, what's the relevance, you can tell me how it fits to a  
17 particular strategy, theory, piece of evidence, whatever in the  
18 estimation hearing, because this doesn't. This is not  
19 enhancing that process.

20 MS. HARDING: Can I try one more time?

21 THE COURT: One more.

22 MS. HARDING: Your Honor, in the end, and so I don't -  
23 - so we're going to have a Trust, all right? And then the  
24 trust is going to be funded, all right, from an estimation from  
25 this Court on what should -- how much money should go into the